UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,129	12/31/2001	Montgomery C. McGraw	067856.0235	1076

7590 03/11/2005	EXAMINER
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ART UNIT	PAPER NUMBER
2153	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Office Action Summary	Application No.	Applicant(s)
		10/039,129	MCGRAW ET AL.
		Examiner	Art Unit
		Sean Reilly	2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>31 December 2001</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

    4a) Of the above claim(s) *32-35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This office action is a first action on the merits of this application. Claims 1-42 are presented for further examination.

Priority

1. The effective filing date for the subject matter defined in the pending claims in this application is 5/4/2001.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I.	Claims 1-31, drawn to a method and system for storing console information associated with a plurality of computing devices, classified in class 709, subclass 224.

II.	Claims 32-35, drawn to a system for inter server communication, classified in class 710, subclass 300.

The inventions are distinct, each from the other because of the following reason:

Invention Groups I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are show to be separately usable. In the instant case, invention I has separate utility such as storing console information associated with a plurality of computing devices, while invention II has separate utility such as inter server communication. See MPEP § 806.05(c).

Because these inventions are distinct for the reason given above and have acquired a

separate status in the art because of their recognized divergent subject matter, restriction for

examination purposes as indicated is proper.

During a telephone conversation with Luke Pedersen on 2/22/2005 a provisional election

was made without traverse to prosecute the invention of Group I, claims 1-31. Affirmation of

this election must be made by applicant in replying to this Office action. Claims 32-35 are

withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a

non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the

inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a request under 37 CFR

1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

2.   The specification is objected to for the following informalities: the specification should be

updated to include the application number of co-pending application entitled *Console*

Information Storage System and Method.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine

grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA

1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to

overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this

application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal

disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37

CFR 3.73(b).

3.   Claims 1-13 and 17-31 are provisionally rejected under the judicially created doctrine of

obviousness-type double patenting as being unpatentable over claims 10-42 of copending

Application No. 10/039051. Although the conflicting claims are not identical, they are not

patentably distinct from each other. Refer to the tables and remarks below for specific claim

mappings and further explanation.

4.   This is a provisional obviousness-type double patenting rejection because the conflicting

claims have not in fact been patented.

Co-pending Application # 10/039051	Instant Application # 10/039129
10. A system, comprising: *a first computing device*, including a first console and a first console interface operable to transmit first console information associated with the first console;	1. A system, comprising: *a plurality of computing devices*, each computing device having a respective console, and a respective console interface; each console interface being operable to transmit console information associated with the respective console;
a *second computing device* coupled for communication with the first computing device, the second computing device having a memory module operable to receive the first console information;	*a console server* coupled for communication with the plurality of computing devices, the console server including a memory module;
and the memory module being further operable store the first console information.	and wherein the memory module is operable to receive and store at least a portion of the console information.

5.   Regarding claim 10, the limitation "a first computing device" does not the limit the claim

scope to only one computing device; therefore "a plurality of computing devices" is within the

scope of the claim and an obvious variant. Further in claims 12-13 an additional client

computing device is claimed (third computing device), showing that the second computing

device is capable of and does indeed communicate with more than one device (a plurality of

computing devices) as in instant application claim #1.

6. The limitation "a console server" is interpreted to be synonymous with "a second computing

device" in the co-pending application.

Co-pending Application # 10/039051	Instant Application # 10/039129
19. A method for storing console information, comprising:	17. A method for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
	coupling a console server for communication with a plurality of computing devices,
	the console server including a memory module;
transmitting console information associated with a console, from a console interface;	transmitting console information associated with the respective console, from the respective console interface;
receiving the console information at a memory module;	receiving the console information at the memory module; and
and storing the console information at the memory module.	storing, at least temporarily, the console information at the memory module.

Co-pending Application # 10/039051	Instant Application # 10/039129
23. A method for storing console information, comprising, a first computing device including a first console and a first console interface, and	17. A method for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
coupling a first computing device and a second computing device	coupling a console server for communication with a plurality of computing devices,
the second computing device including a memory module;	the console server including a memory module;
transmitting first console information associated with the first console from the first console interface to the memory module;	transmitting console information associated with the respective console, from the respective console interface;
receiving the first console information at the memory module; and	receiving the console information at the memory module; and
storing the first console information at the memory module.	storing, at least temporarily, the console information at the memory module.

Co-pending Application # 10/039051	Instant Application # 10/039129
27. Logic encoded in media for storing console information, the logic operable to perform the	22. Logic encoded in media for storing console information associated with a plurality of

following steps:	computing devices, each computing device having a respective console, and a respective console interface, the logic being operable to perform the following steps:
	couple a console server for communication with the plurality of computing devices, the console server including a memory module;
transmit console information associated with a console, from a console interface;	transmit console information associated with the respective console, from the respective console interface;
receive the console information at a memory module;	receive the console information at the memory module;
and store the console information at the memory module.	and store, at least temporarily, the console information at the memory module.

Co-pending Application # 10/039051	Instant Application # 10/039129
31. The logic encoded in media for storing console information associated with a *first computing device (plurality of computing devices)* which is coupled for communication with a second computing device, the first computing device computing a first console	22. Logic encoded in media for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, the logic being operable to perform the following steps:

and a first console interface,	
and the second computing *(console server)* device including a memory module, the logic operable to perform the following steps:	couple a console server for communication with the plurality of computing devices, the console server including a memory module;
transmit first console information associated with the first console from the first console interface to the memory module;	transmit console information associated with the respective console, from the respective console interface;
receive the first console information at the memory module;	receive the console information at the memory module;
and store the first console information at the memory module.	and store, at least temporarily, the console information at the memory module.

Co-pending Application # 10/039051	Instant Application # 10/039129
35. A system for storing console information, comprising:	27. A system for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
	means for coupling a console server for communication with the plurality of computing devices, console server including a memory module;

means for transmitting console information associated with a console, from a console interface;	means for transmitting console information associated with the respective console, from the respective console interface;
means for receiving the console information at a memory module;	means for receiving the console information at the memory module;
and means for storing the console information at the memory module.	and means for storing, at least temporarily, a console information at the memory module.

Co-pending Application # 10/039051	Instant Application # 10/039129
39. A system for storing console information, comprising:	27. A system for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
means for coupling a first computing device *(plurality of computing devices)* and a second computing device *(console server)*, the first computing device including a first console and a first console interface, and the second computing device including a memory module;	means for coupling a console server for communication with the plurality of computing devices, console server including a memory module;
means for transmitting first console information associated with the first console	means for transmitting console information associated with the respective console, from

from the first console interface to the memory module;	the respective console interface;
means for receiving the first console information at a memory module;	means for receiving the console information at the memory module;
and means for storing the first console information at the memory module.	and means for storing, at least temporarily, a console information at the memory module.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 22-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. Regarding claims 22-26, the limitation "*logic* encoded in media" reads on non-statutory subject matter. *Logic* is itself an abstract idea, which merely provides a manipulation of abstract ideas and is therefore non-statutory.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9.   Claims 2, 15, 18, 23, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

10.   Regarding claims 2, 18, 23, and 28 the use of the term "periodically" renders the claim

ambiguous. It is unclear whether periodically represents sending the data at regular intervals or

transmitting the data from time to time intermittently. It is presumed periodically represents

transmitting the data intermittently to the server.

11.   Claim 15 recites the limitation "the plurality of *web* server processing cards" in line 4.

There is insufficient antecedent basis for this limitation in the claim. It is presumed "the

plurality of web server processing cards" should read "the plurality of server processing cards".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12.   Claims 1-2, 4-8, 10-12, 17-20, 22-25, and 27-30 are rejected under 35 U.S.C. 102(e) as

being anticipated by Othmer et al. (U.S. Patent Number 6,167,358; hereinafter Othmer).

13.   Regarding claim 1, Othmer discloses a system, comprising:

- ❑ a plurality of computing devices (Figure 1, client computers), each computing device having a respective console (inherent), and a respective console interface (nub and transceiver; Figure 3, Components 82 and 84);

- ❑ each console interface being operable to transmit console information (black box data) associated with the respective console (Col 8, line 66 – Col 9, line 5);

- ❑ a console server coupled for communication with the plurality of computing devices (Figure 1), the console server including a memory module (Figure 2, Component 66); and

- ❑ wherein the memory module is operable to receive and store at least a portion of the console information (Col 9, lines 2-3).

14. Regarding claims 17, 22, and 27, Othmer discloses a method for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:

- ❑ coupling a console server for communication with a plurality of computing devices (Figure 1), the console server including a memory module (Figure 2, Component 66);

- ❑ transmitting console information associated with the respective console (black box data), from the respective console interface (nub and transceiver, Col 8, lines 8-12 and Col 8, line 66- Col 9 line 2);

- ❑ receiving the console information at the memory module (Col 8, line 66 – Col 9, line 5); and

- ❑ storing, at least temporarily, the console information at the memory module (database 66, Col 9, lines 5-7).

15. Regarding claims 2, 18, 23, and 28, Othmer discloses each console interface is operable to transmit the console information to the console server, periodically (intermittently) (Col 12, lines 59-62).

16. Regarding claim 4, Othmer discloses the console information is transmitted to the console server in response to a predefined event, circumstance, alert or situation (Col 12, lines 59-62).

17. Regarding claims 5, 19, 24, and 29, Othmer discloses the console server is operable to transmit requests (configuration file) to the plurality of computing devices to transfer at least a portion of the console information to the console server [through a configuration file sent from the server to a client(s) (Col 12, lines 18-30), the server can request information to be collected and then sent to itself (Col 12, lines 59-64)].

18. Regarding claim 6, Othmer discloses the requests comprise interrupt driven/on demand requests (Col 5, lines 48-52).

19. Regarding claim 7, Othmer discloses wherein the console server is operable to transmit the requests in response to a predefined event (Col 5, lines 41-48).

20. Regarding claim 8, Othmer discloses wherein each console interface is further operable to transmit the console information associated with the respective console, in real-time (Col 12, lines 59-62).

21. Regarding claim 10, Othmer discloses the console server is located in a remote location from at least one of the plurality of computing devices, and the console server is coupled with the plurality of computing devices over a communication network (Figure 1).

22. Regarding claims 11, 20, 25, and 30, Othmer discloses the console server is operable to present the console information regarding each of the plurality of computing devices, at a graphical user interface, during a single communication session (Col 14, lines 29-32).

23. Regarding claim 12, Othmer discloses wherein the console server comprises a network interface card (inherent for network communication with the clients), and the plurality of computing devices comprise server processing cards (inherently within any computing device that is capable of "computing and processing data").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

24. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Othmer et al. (U.S. Patent Number 6,167,358; hereinafter Othmer) and Examiner's Official Notice.

25. Regarding claim 3, Othmer discloses transmitting the console information to the console server (as cited above), however Othmer fails to disclose transmitting such information at predetermined time intervals. The Examiner takes Official Notice that it was well known in the art at the time of invention to schedule sending information from a client to a server at predetermined time intervals. It would obvious to one of ordinary skill in the art at the time of invention to modify the Othmer system to transmit historical console information to the server at

predetermined time intervals, in order to ensure the server does not become overloaded with

numerous clients transmitting data all at once.

26. Regarding claim 9, Othmer fails to disclose the memory module comprises a buffer. The

Examiner takes Official Notice that it was well known in the art at the time of invention to use

buffered memory for storage so when the memory reaches capacity it can be overwritten with

new data. It would have been obvious to one of ordinary skill in the art at the time of invention

to use buffered memory in the Othmer system so when the memory reaches capacity it can be

overwritten with new data.

27. Claims 13, 21, 26, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Othmer et al. (U.S. Patent Number 6,167,358; hereinafter Othmer) and Nguyen et al. (U.S.

Patent Number 6,609,213; hereinafter Nguyen).

28. Regarding claims 13, 21, 26, and 31, Othmer fails to disclose a backup console server

operable to monitor communications with the console server, and wherein the backup console

server is operable to assume responsibilities of the console server if a communication failure

with the console server is detected. However, it was well known in the art at the time of

invention to use backup or redundant servers for ensuring consistent network server connectivity

to client devices, as evidenced by Nguyen. In a related art, Nguyen discloses a backup server

cluster monitors communications with a server to detect a failure (Col 3, lines 32-34). If a

failure is detected the backup server cluster assumes responsibilities of the server (Col 3, lines

34-41). It would have been obvious to one of ordinary skill in the art at the time of the invention

to modify Othmer's system to include the backup server functionality disclosed by Nguyen, in

order to maintain consistent network server connectivity to client devices.

29. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Othmer et al.

(U.S. Patent Number 6,167,358; hereinafter Othmer) and Qiu (U.S. Patent Application

Publication Number 2002/0124128).

30. Regarding claim 14, Othmer discloses:

- a plurality of computing devices (Figure 1, client computers), each computing device

  having a respective console (inherent), and a respective console interface (nub and

  transceiver; Figure 3, Components 82 and 84);

- each console interface being operable to transmit console information (black box

  data) associated with the respective console (Col 8, line 66 – Col 9, line 5);

- a console server coupled for communication with the plurality of computing devices

  (Figure 1), the console server including a memory module (Figure 2, Component 66);

  and

- wherein the memory module is operable to receive and store at least a portion of the

  console information (Col 9, lines 2-3).

However, Othmer fails to disclose the plurality of server processing cards (computing

devices) are housed within a single server chassis. Nevertheless it was well known in the art at

the time of the invention to house a plurality of computing devices within a server chassis, as

evidenced by Qiu. In a related art, Qiu discloses a server chassis that contains multiple server

processing cards (pg 4, ¶ 58, lines 1-8). Qiu further discloses that such a high density server

configuration is reliable, versatile and economical (pg 2, ¶ 29). It would have been obvious to

one of ordinary skill in the art at the time of invention to modify Othmer's system to house

multiple computing devices (server processing cards) within a single server chassis as disclosed

by Qiu, since such a compact design is reliable, versatile and economical.

31. Regarding claim 15, Othmer discloses a communication bus (network) forming the

communication coupling between the console server and the plurality of server processing cards

(Othmer, Figure 1).

32. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Othmer et al. (U.S.

Patent Number 6,167,358; hereinafter Othmer) and Qiu (U.S. Patent Application Publication

Number 2002/0124128) and further in view of Bassman et al. (U.S. Patent Number 6,408,334;

hereinafter Bassman).

Regarding claim 16, Othmer and Qiu fail to disclose coupling the communication bus comprises

an RS-485 communication bus. In a related art, Bassman discloses coupling multiple computing

devices for communication using an RS485 bus (Figure 1). It would have been obvious to one of

ordinary skill in the art at the time of invention to modify the combined Othmer and Qiu system

to communicate using an RS485 bus as disclosed by Bassman, in order to allow for the

management of multiple computers via a single network line (Bassman Col 1, lines 49-52).

Conclusion

33. The prior art made of record, in PTO-892 form, and not relied upon is considered pertinent
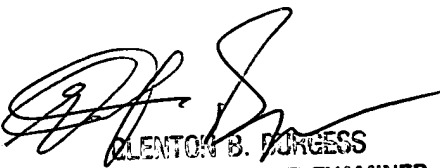
to applicant's disclosure.

34. This office action is made **NON-FINAL.**

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Sean Reilly whose telephone number is 571-272-4228. The

examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2/22/2005

GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100